

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 20 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

CC Docket No. 96-98

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COMMENTS OF THE WESTERN ALLIANCE ON DIALING PARITY AND  
ACCESS TO POLES, CONDUITS AND RIGHTS OF WAY

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May 20, 1996

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## **SUMMARY**

The Telecommunications Act of 1996 recognizes the unique position of rural carriers and the importance of achieving the Act's procompetitive purpose without harming rural ratepayers. Any rules enacted to implement the dialing parity and right-of-way access provisions of the Act must reflect this congressional policy. Accordingly, rural LECs should not be required to make premature investment in network upgrades, should not be asked to bear the marketing costs of new entrants and should be fully compensated for investment intended to achieve dialing parity and number portability. Similarly, rural LECs should not be required to make pole, conduit and right-of-way space available to new entrants where those actions will undermine the LECs' own universal service obligations. Rules that do not reflect these requirements may result in increased rates for basic, local service or increased pressure on state and federal universal service programs.

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**COMMENTS OF THE WESTERN ALLIANCE ON DIALING PARITY AND  
ACCESS TO POLES, CONDUITS AND RIGHTS OF WAY<sup>1</sup>**

As the Western Alliance pointed out in its filing made in this proceeding on May 16, 1996, the Telecommunications Act of 1996<sup>2</sup> recognizes the unique position of rural carriers and the importance of implementing the Act in a way that achieves its procompetitive purpose without harming rural ratepayers.<sup>3</sup> As with other requirements in the Act that are intended to achieve efficient local competition, the dialing parity and right-of-way access provisions must be implemented with this mandate in mind. Accordingly, rural LECs should not be required to make premature investment in network upgrades, should not be asked to bear the marketing costs of new entrants and should be fully compensated for investment intended to achieve dialing parity and

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<sup>1</sup> Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC No. 96-182 (Apr. 19, 1996)(the "NPRM").

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (hereinafter the "1996 Act" or the "Act").

<sup>3</sup> Comments of the Western Alliance at 2, 7.

number portability. Similarly, rural LECs should not be required to make pole, conduit and right-of-way space available to new entrants where those actions will undermine the LECs' own universal service obligations. Rules that do not reflect these requirements may result in increased rates for basic, local service or increased pressure on state and federal universal service funds.<sup>4</sup>

**I. Dialing Parity Should Be Achieved Without Burdening Rural Ratepayers Or The Universal Service System.**

The NPRM asks for comment on a number of questions concerning the implementation of dialing parity. Among these are the need for the Commission to set implementation deadlines for dialing parity; whether incumbent LECs should be required to educate consumers about their right to choose among competing local carriers; and how LECs should be compensated for the cost of implementing dialing parity.

As to the first question, the Western Alliance urges the Commission not to set a deadline for dialing parity implementation; or, if any such deadline is imposed, that it not apply to smaller, rural carriers. Imposition of an artificial deadline could require rural telephone companies to make expensive hardware and software upgrades long before competition arrives in their serving areas. Such stranded investment will have to be recovered through increased rates to end users, or through additional demands on universal service mechanisms. Neither approach is consistent with the intent of Congress or the policies of the Commission. Instead, the Commission should take the same approach it took when it directed independent companies to upgrade their networks for

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<sup>4</sup> While these comments are as specific as possible, the Western Alliance notes that it is handicapped by the absence, in the NPRM, of proposed rules to which its comments can be addressed.

equal access: it should require smaller companies to upgrade their networks only within a reasonable time after receiving a bona fide request for interconnection.<sup>5</sup>

As to the second question, the Western Alliance believes that in a competitive environment, each carrier should bear the cost of marketing its service. There is no competitive necessity for incumbent LECs to underwrite customer education or other programs intended to inform consumers of the opportunity to select service from other carriers. In fact, as the United States Supreme Court has found in a similar context, requirements of this kind raise serious concerns under the First Amendment to the U.S. Constitution.<sup>6</sup>

Finally, the Western Alliance urges that all costs of upgrading rural LEC networks to accommodate dialing parity and number portability should be recovered from charges for interconnection with the rural LECs' networks. Any requirement that those costs be recovered from rural ratepayers will result in local rate increases or increase the burden on universal service mechanisms.

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<sup>5</sup> In its equal access implementation orders, the Commission required nonBell, nonGTE LECs to convert their electronic end offices to equal access within three years of receipt of a reasonable request for access from any IXC. For end offices equipped with electromechanical switches, equal access was to be implemented as soon as practicable, but no deadline was imposed. *See MTS and WATS Market Structure Phase III*, 100 FCC 2d 860, 875 (1985). A similar approach would be appropriate for local network upgrades to accommodate dialing parity and number portability.

<sup>6</sup> *See Pacific Gas & Electric Company v. Public Utilities Commission of California*, 475 U.S. 1, 106 S Ct 903, 89 L Ed 2d 1 (1986), *reh. denied*, 475 U.S. 1133, 106 S Ct 1667, 90 L Ed 2d 208 (1986).

## **II. The Commission Should Not Adopt Detailed Rules Defining The Circumstances In Which Access To LEC Poles, Conduits And Rights Of Way May Be Denied.**

No set of rules can successfully anticipate all of the capacity and engineering concerns that might legitimately cause a LEC to deny other carriers access to its poles, conduits and rights of way. Accordingly, the Commission should not attempt to define those circumstances in a set of new rules, but should permit these questions to be resolved on a case-by-case basis, within the standards set out in the Act.

If the Commission should choose to enact rules concerning access to poles, conduits, and rights of way, it should recognize that rural LECs may have built in excess pole and conduit capacity in order to expand their networks in compliance with universal service obligations or the terms and conditions of Rural Utilities Service ("RUS") financing. Any rules adopted by this Commission should recognize that rural LECs need not turn this capacity over to new entrants, where to do so would jeopardize the ability of the LECs to meet these obligations.

Respectfully submitted,

By:

  
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May 20, 1996

## **CERTIFICATE OF SERVICE**

I, Kimberly E. Thomas, hereby certify that the foregoing **Reply Comments Of The Western Alliance On Dialing Parity and Access to Poles, Conduits and Right of Way** was mailed on this 20th day of May, via first class U.S. mail to the following:

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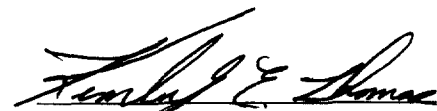
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